IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

RSA.No. 74 of 2007(A)

AGAINST THE JUDGMENT IN I.A3660/06 IN AS.379/2006 of I ADDL.DISTRICT COURT,ERNAKULAM AND DISMISSAL OF THE APPEAL DATED 18.12.2006 ON THE FILE OF 1ST ADDL. DISTRICT COURT, ERNAKULAM FILED AGAINST THE JUDGMENT AND DECREE IN O.S.1377/03 DATED 26.11.05 ON THE FILE OF 1ST ADDL.MUNSIFF COURT,ERNAKULAM.

OS.1377/2003 of I ADDL.M.C.,ERNAKULAM

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APPELLANT/APPELLANT IN AS/DEFENDANT IN OS

FRANKLIN, AGED 48 YEARS, S/O. THOMAS,
KARIMPADATH HOUSE, CHERANALLUR,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.K.SUBRAMANIAN

RESPONDENTS: RESPONDENTS IN AS/PLAINTIFF AND 1ST AND 2ND DEFENDANTS IN O.S.

1. BHUVANESWARY, W/O. KRISHNAN,
AGED 42 YEARS, KARIMPADATHUNDIYIL HOUSE,
CHERANALLUR, ERNAKULAM.

2. SEENA VENU, AGED 28 YEARS,
D/O. ANANDAN @ MANI, KARIMPADATH HOUSE,
CHERANALLUR, ERNAKULAM.

3. SARADA ANANDAN, W/O. ANANDAN,
AGED 46 YEARS, KARIMODATH HOUSE,
CHERANALLUR, ERNAKULAM.

BY ADV. SRI.P.P.JACOB FOR R1.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.S.A.74 OF 2007

ORDER ON I.A.116/07 IN R.S.A.74 OF 2007

DISMISSED.

08.02.2007 SD/-M.SASIDHARAN NAMBIAR, JUDGE.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR, J.

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R.S.A.74 OF 2007

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DATED THIS THE 8TH DAY OF FEBRUARY, 2007

JUDGMENT

Third defendant in O.S.1377 of 2003 on the file of Munsiff Court, Ernakulam is the appellant. First respondent is the plaintiff and respondents 2 and 3 are the other defendants. Learned Munsiff granted a decree on 26.11.2006. Appellant was set exparte earlier on 9.11.2005. The first appeal was filed on 23.11.2006, along with I.A.3660 of 2006, an application under Section 5 of the Limitation Act, to condone the delay of 311 days. Learned District Judge, as per order dated 18.12.2006 dismissed the application and consequently dismissed the appeal as barred by time. This Second Appeal is filed challenging the dismissal of the appeal.

2. Learned counsel appearing for the appellant was heard. The argument of the learned counsel was that learned District Judge should have condoned the delay as the delay was caused not due to wilful laches but due to the failure of his counsel to give information of the posting of the suit to the appellant.

3. The affidavit filed by the appellant in support of I.A.3660 of 2006 shows that written statement was filed on 1.6.2004 and he did not get any intimation from his counsel thereafter and in the month of August 2006, he received notice in the execution petition from the court and thereafter approached another counsel and obtained a certified copy and then only he came to know that an exparte decree was passed on 26.11.2005. The delay was sought to be explained by the appellant stating that he was unaware of the posting date and he had taken the certified copy and filed the appeal and therefore the delay is to be condoned. Learned Additional District Judge properly considered the application. Even according to the appellant, though the decree was passed on 24.11.2005, copy application was filed only on 16.9.2006. Even if the case of the appellant is accepted when the certified copy was received on 5.10.2006, first appeal was filed only on 23.11.2006. There is absolutely no explanation for the delay caused in filing the appeal from 5.10.2006 to 23.11.2006. The affidavit of the appellant reveals that he was aware that the period of limitation to

prefer first appeal is 30 days. In spite of that, appeal was not filed even within 30 days from the date of receipt of the certified copy. No explanation whatsoever was offered as to why the appeal was not filed immediately after 5.10.2006. In such circumstances, learned District Judge rightly dismissed the application. I find no substantial question of law involved in this case.

RSA is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-